and crossed over the defendant's land to the non-riparian land of the plaintiff. The plaintiff, being thus deprived of the fertilizing effect of the water, seeks damages. *Held*, that he may recover. *Thompson* v. *New Haven Water Works*, 86 Atl. 585 (Conn.).

For a discussion of the principles involved, see NOTES, p. 476.

BOOK REVIEWS.

CERTAINTY AND JUSTICE. By Frederick R. Coudert. New York and London: D. Appleton and Company. 1913. pp. vii, 320.

This book is a series of eleven essays, nine of them contributed to various legal periodicals during the last ten years, and two now printed for the first time. Despite the circumstances of their first appearance, the essays constitute a well-considered and homogeneous body of thinking on the topic indicated by the general title. Mr. Coudert brings to the age-long discussion of the importance of certainty in the administration of justice an abundance of apt and interesting illustrative material, gathered from a wide experience as a practitioner, a well-trained and thoughtful reflection not only upon his own experience and that of the American bar, but also upon a familiarity with the law and legal machinery of continental Europe and particularly of France. Indeed one of the most obvious morals of the book is the value which an acquaintance with the modern civil law of continental Europe possesses for the active practitioner, and even more for the thoughtful jurist and legal reformer. Mr. Coudert is all of these, and his contribution to the problems of legal reform is everywhere enhanced in importance by his familiarity with the achievements of the other great legal system of Western civilization.

The first three essays of the book set forth its central thesis — that our day demands a greater flexibility in the administration of justice than has been possible to the courts under a somewhat undiscriminating devotion to the ideal of certainty as formulated in the rule of *stare decisis*. He favors what he would call a liberal interpretation of both the unwritten and the written law, and especially the provisions of the Constitution. He is willing to trust the task of this interpretation to a thoroughly trained and professionally high-minded bench and bar, learned not only in the more definite legal lore which constitutes their professional equipment, but also in the traditions of their calling and the ideals therein formulated. In the hands of such a bench and bar a decreasing regard for precedent *qua* precedent might well be replaced by an increasing familiarity with the social and economic ends which the administration of justice is, after all, only a means of achieving. Mr. Coudert is no doubt right in believing that professional training and idealism, giving us an adequately prepared bench and bar, are our surest guaranties of an efficient administration of justice. On the other hand, it seems unfortunate that his analysis of the fields in which certainty is desirable and those in which the very nature of the subject-matter makes rigid rules unworkable has not been more thorough-going. The real antithesis in juristic thought is not between certainty and justice, but between the field of rule and that of discretion. Justice sometimes demands a certain rule; at other times it demands the possibility of a judicial discretion regulated only by a proper training in the processes of judicial thinking, and by a proper education preparing the administrator to appreciate the social ends which will be affected by the wisdom or unwisdom of

his decision. To be more specific, in the fields of property and commercial dealings, certainty, a definite and ascertainable rule by which men can plan for future transactions, is the paramount desideratum. On the other hand, in those fields of law involving problems of human conduct and personal relations, — in questions, for example, of tort, of divorce, of fiduciary relations, such as trusts or agency, — free play must be given to the discretion of the trained administrator. It is in the delimitation of these two fields, both of them essential in the administration of justice, that the work surely lies which at present most needs to be done. It is unfortunate, then, that any antithesis should even be suggested between certainty and justice, though the antithesis lies rather in the title than in the content of Mr. Coudert's thoughtful and suggestive book.

Nevertheless it must be said that the apparent approval with which Mr. Coudert regards the alteration, by the indirect method of interpretation, of definitely formulated rules such as make up our written constitutions is to be regretted. The courts who by any spurious interpretation change a definite rule while ostensibly paying homage to it are doing a serious disservice to the cause of justice, as well as to that certainty which the lawyer of an earlier generation prized as the most valuable element of the law. Where a change ought to be made, it is better that the judicial branch of the government be patient until the popular demand has formulated itself with sufficient definiteness and grown to sufficient earnestness to produce a direct and thorough-going amendment by legislation, rather than that it unsettle the popular mind as to the efficacy of any form of words, however definite, to lay down a rule of law, by forcing upon such form of words in any particular instance an interpretation which in fairness it cannot be said it was intended by its framers to bear. The popular mind has already too deeply rooted in it the impression that it is the highest exhibition of legal skill to drive a coach and four through gaps in the most careful devices of language, — hence no doubt a large part of the popular distrust which Mr. Coudert recognizes to exist against his profession. Pretty obviously the remedy for this distrust is not to use this astuteness to achieve presently popular ends by means which the ethical sense of the community cannot permanently approve. The public, though they may be gratified to find their wishes served by such a display of legal acumen, cannot but in the long run come to feel that this same acumen may sometime be used to frustrate the popular will as embodied in enactments which they wish enforced with literal strictness. Indeed this is the state of mind which now exists, and no use of powers of interpretation will permanently alter it. Mr. Coudert suggests much more accurately the real remedy for the popular distrust of the legal profession when he emphasizes the need of high ideals and adequate education for the lawyer. With the administration of justice in the hands of a bench and bar thus properly prepared, there will be no need for the frequent suggestion that rules or documents which seem to hamper the development of a modern and rapidly changing society may be nullified by any process of indirection.

C. A. H.

A Treatise on the Law of Corporations having a Capital Stock. By William W. Cook. Seventh Edition. Boston: Little, Brown, and Company. 1913. 5 volumes. pp. lxxii, 4984.

In reviewing the most recent edition of a book which, like Cook on Corporations, has been steadily developed through many previous editions, it is unnecessary to describe in detail the general characteristics which the latest edition shares with those that have gone before. Any lawyer who has had to do in recent years with corporations has known that he could not be sure that